IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 304 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?No.

5. Whether it is to be circulated to the Civil Judge? No

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RATHNA AGENCIES

Versus

YOGESHCHANDRA MADHUSUDAN SONI

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Appearance:

MR JV MEHTA & P.B.Bhatt for Petitioners

Mr.Y.F.Mehta A.P.P. for the State

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 03/10/96

ORAL JUDGEMENT

Rule:

Heard the learned advocate for the parties at length and on merits. Hence I proceed to decide the matter finally.

1. Present Revision Application is filed by the original accused nos. 3 to 7 in the cri. case no. 250/93 on the file of the learned JMFC, Khedbrahma.

2. Present accused and some more persons are prosecuted for the alleged offence punishable u/s. 16 of the Food Adulteration Act. It is the case of the prosecution that on 30.1.92, the Food Inspectors had purchased sample of groundnut oil from original accused no.1. It was the case of the original accused no.1 that said ground nut oil was purchased by him from the whole saler-original accused no.2. Said original accused no.2 whole saler had purchased the ground nut oil which was manufactured by petitioner no.1 and petitioners nosw 2 to 5 are the partners of petitioner no.1. The sample of the ground nut oil was sent to the Public Analyst and the same was analysed on 26.2.92 and the Public Analyst had found that it was not of the prescribed standard and that it was an adulterated one as per the provisions of Food Adulterations Act and the Rules framed thereunder. After the said report of the Public Analyst, a letter was sent to the present petitioners dated April 19,1993 and it was the claim of the petitioners that they had replied to the same through their advocate. After process was issued to the present petitioners by the learned JMFC,Khedbnrahma in cri. case no.250/93, present petitioners appeared and they filed application u/s 13(2) of the Food Adulteration Act and they claimed that the sample should be sent to the Central Food Laboratory for its analysis and report. Said application of the present petitioners has been rejected by the learned JMFC by holding that the same is filed at a very late stage by his order dated 6.7.96. Hence the petitioners have approached this Court by way of this Revision Application.

3. If the provisions of section 13(2) of the Food Adulteration are considered then it would be quite clear that u/s 13(2), a right has been conferred on the accused to get the samples analysed by the Central Food Laboratory and the said section also makes it quite clear that the report of the Central Food Laboratory would supersede the report of the Public Analyst. If the samples sent to the Central Food Laboratory is found unsuitable for analysis by the Chemical Analyser/Public Analyst of the Central Food Laboratory, then the court has to consider the question as to whether non availability of the report of the Chemical Analyser of the Central Food Laboratory on account of the sample being unfit for analysis was due to any delay on the part of the accused or not. If the court comes to the conclusion that the accused was responsible for delaying

the sending of the samples and getting the report of the Chemical Analyser of the Central Food Laboratory, then the court has to consider further question as to whether the report of Public Analyst at Rajkot becomes conclusive and final and then to consider further the case before him in order to find out as to whether the accused is guilty of the offence with which he is charged before him. But merely because the accused have sought sending of samples to the Public Analyst after few months or an year or two, the learned JMFC cannot straight way reject the application of the accused . If the accused are responsible for delay in sending of the samples to the Chemical Analyzer of the Central Food Laboratory and if the Chemical Analyser of the Central Food Laboratory is unable to make analysis of the samples as they are unfit on account of delay, then the accused will have to face necessary consequence thereof but the learned Magistrate cannot straight way reject the claim of the accused to have the samples analyzed by the Chemical Analyser of the Central Food Laboratory by holding that the application is filed at late state.

3., Therefore, in the above circumstances, present revision application will have to be allowed and the order passed by the learned JMFC, Kehdbrahma on the application of the present petitioners, by which he rejected their prayer to send the sample to the Central Food Laboratory will have to be quashed and set aside. The learned JMFC, Khedbrahma is directed to send the samples of the food article to the Central Food Laboratory as prayed by the original accused nos 3 to 7 and while forwarding the said sample he should mention in the covering letter that in case if the Chemical Analyser of the Central Food Laboratory happens to find that the food articles forwarded to him was unfit for analysis , then also to state as upto what period from the date of manufacture of the said food article would have been fit for analysis. Order of this court be transmitted to the learned JMFC, Khedbrahma forthwith in order to avoid any further delay in the matter. The Revision Application is allowed. Rule made absolute.

(S.D.Pandit.J)